Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-1709

RAY ELBERT PARKER,

Petitioner,

v.

DANIEL J. BOORSTIN,
LIBRARIAN OF CONGRESS, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No.

RAY ELBERT PARKER,

Petitioner,

v.

DANIEL J. BOORSTIN,
LIBRARIAN OF CONGRESS, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petitioner, Ray Elbert Parker, respectfully prays that a Writ of Certiorari issue to review the judgment and final order of the United States Court of Appeals for the District of Columbia Circuit entered on February 5, 1976

and the subsequent order denying petition for rehearing entered on March 1, 1976.

OPINIONS BELOW

The opinions of the United States Court of Appeals, which are not yet reported, are set out in the Appendix A hereto at page 1a. The Opinions of the United States District Court, which are not reported, are set out in the Appendix B hereto at pp. 1b.

JURISDICTION

The jurisdiction of this Court is invoked under the provisions of 28 U.S.C. §1254(1), and pursuant to Rule 19(b) of the Supreme Court Rules. Petitioner believes that the issues presented to this Court involve conflict of judicial opinion between the courts on the same matters and important questions of law which have not been, but should be, settled by this Court. The final judgment of the United States Court of Appeals for the District of Columbia Circuit was entered on March 1, 1976.

QUESTIONS PRESENTED

1. Whether the Equal Opportunity Act of 1972 gives a federal court jurisdiction for failure by a federal agency to take action on an employees complaint and whether prior to exhaustion of agency remedies the District Court is authorized to grant a preliminary injunction in a federal advancement case raising reverse on-the-job race, sex and age discrimination claims?

2. Whether petitioner was entitled to an order as a matter of law to compel the General Accounting Office to perform an audit where authorized under statutory law and agency regulations?

3. Whether petitioner was entitled to an order as a matter of law to compel the Civil Service Commission to perform a position classification audit or in the alternative, to provide hearing where it is alleged that the properly assigned duties and classification were arbitrarily, capriciously and illegally altered, by the government agency without notice, hearing or any form of compliance whatsoever with their own published regulations?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution of the United States, Amendment V:

> "No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall property be taken for public use, without just compensation."

Section 717(b) of the Equal Employment Opportunity Act of 1972 (Public Law 92-261; 86 Stat. 103), provides:

> "With respect to employment in the Library of Congress, authorities granted in this subsection for the Civil Service Commission shall be exercised by the Librarian of Congress . . . an employee or applicant for employment, if aggrieved by the final disposition of his Complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 706, in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant."

The Classification Act provides:

> ". . . to provide a plan for classification of positions whereby . . . the principle of equal pay for substantially equal work will be followed."

Lloyd-LaFollette Act, provides:

> "... for administrative review of a claim of *wrongful* adverse action...."

Back Pay Act, provides:

> "... for the award of money damages for a *wrongful* deprivation of pay....

Library of Congress Regulation 1515-4, provides:

> "The General Accounting Office makes periodic *independent* audits and investigations of the Library's financial activities and may submit written reports.... Section 236 of the Legislative Reorganization Act of 1970 provides that: 'Whenever the General Accounting Office has made a report which contains recommendations to the head of any Federal agency, such agency shall—not later than sixty days after the date of such report, submit a written statement to the Committees on Government Operations of the House of Representatives and the Senate of the action taken by such agency with respect to such recommendations...." (as amended January 26, 1972)

Library of Congress Regulations 2016-8, provide:

> "An employee ... may ... appeal a classification action *directly* to the Civil Service Commission ... *and need not apply within the Library before appealing to the Commission.*" (as amended June 29, 1973)(emphasis supplied)

STATEMENT OF THE CASE

This litigation concerns petitioner's right to seek redress, remedy and relief under statutory law and agency regulations by way of judicial action to compel the Library of Congress, Civil Service Commission and the General Accounting Office to perform a required duty in

accordance with and pursuant to Library of Congress regulations. The Civil Service Commission and the General Accounting Office have never performed audits on the federal agency as required by law and are allegedly remiss, negligent or in violation of their delegated responsibility. In addition, the agency regulations make no mandatory provision or requirement for the "exhaustion doctrine" regarding either the Civil Service Commission or the General Accounting Office.

Petitioner sought relief by way of audit based on the fact that the Library of Congress has arbitrarily, capriciously and illegally altered his job classification, job series and position requirements and thereby denied him promotional opportunity in the position to which he was duly appointed under an implied contract. A record of a Civil Service Commission and General Accounting Office audit would serve as *prima facie* evidence of petitioner's allegations of abuse of administrative discretion by altering his classification without notice and hearing in direct violation of the agency "published" regulations. The failure of the federal agencies to review his complaints and the dismissal of his actions by the federal courts without oral argument or review has resulted in denial of the most fundamental rudiments of due process.

The importance and substantiality of the questions presented have not been denied by the Library of Congress, Civil Service Commission or General Accounting Office. The only claim is that they are premature or beyond the jurisdiction of the federal courts. But review here cannot be premature where the alleged necessity of following further administrative proceedings having no remedy or relief, in and of itself raises significant issues justifying the grant of certiorari.

REASONS FOR GRANTING THE WRIT

I.

WHETHER THE EQUAL OPPORTUNITY ACT OF 1972 GIVES A FEDERAL COURT JURISDICTION FOR FAILURE BY A FEDERAL AGENCY TO TAKE ACTION ON AN EMPLOYEES COMPLAINT AND WHETHER PRIOR TO EXHAUSTION OF AGENCY REMEDIES THE DISTRICT COURT IS AUTHORIZED TO GRANT A PRELIMINARY INJUNCTION IN A FEDERAL ADVANCEMENT CASE RAISING REVERSE ON-THE-JOB RACE, SEX AND AGE DISCRIMINATION CLAIMS?

This Federal employee reverse discrimination action, arising under the Equal Employment Opportunity Act of 1972 §§706, 717, the Constitution of the United States and Library of Congress regulations 2016-8 and (as amended June 29, 1973) and LCR 1515-4 (as amended January 26, 1972) is before the Court to determine what standards of judicial review applies.

Petitioner did not seek a decision by the lower court on the "merits" of his complaints, but rather sought to enjoin respondents from filling positions in an arbitrary, capricious and illegal manner and to preclude filling the positions on a permanent basis in order to preserve the vacancy for petitioner to fill if he ultimately established a forum in the agency and prevailed on his claims.

It is asserted that because the federal agency authorized administrative review by the Civil Service Commission and the General Accounting Office and ultimate administrative solutions, petitioner has for all practical purposes exhausted administrative remedies and was entitled to make application for audits and ultimately judicial review. *Parks v. Brennan,* 380 F. Supp. 790; *Sampson v. Murray,* 415 U.S. 61, 94 S.Ct. 937 (1974).

It is petitioner's contention that §§706 and 717 of the Equal Employment Opportunity Act of 1972 grants the Federal Court jurisdiction over federal employee reverse discrimination claims and establishes the Court's remedial authority under the same statutory provision applicable to private employees. The traditional remedies otherwise available in the employment relationship are inappropriate and inadequate here because what petitioner needed to protect his interest pending resolution of the merits of his claims was the continuation of a permanent vacancy which is precluded by the Library of Congress regulations and practice since an employee allegedly pre-selected in an arbitrary, capricious or illegal manner cannot be removed after appointment or final personnel action for any reason. Payment to petitioner of backpay if he later prevails or the awarding to him of a permanent position elsewhere and inconsistent with training and experience acquired over a period of sixteen years is an inadequate remedy.

A federal court may intervene in an administrative decision where the decision was arbitrary and capricious, inconsistent with applicable agency regulations, unsupported by notice, hearing and substantial evidence, and when the injured party lacks an effective remedy, or there is a need for creation of a remedy. *Ringer v. Mumford,* 355 F. Supp. 749 (1973); *Sunshine Pub. Co. v. Summerfield,* 184 F. Supp. 767; *Hagarty v. United States,* 449 F.2d 352.

The Equal Employment Opportunity Act of 1972 gives the Court jurisdiction when an agency either fails to take appropriate action or in the alternative refuses to do so.

II.

WHETHER PETITIONER WAS ENTITLED TO AN ORDER AS A MATTER OF LAW TO COMPEL THE GENERAL ACCOUNTING OFFICE TO PERFORM AN AUDIT WHERE AUTHORIZED UNDER STATUTORY LAW AND AGENCY REGULATIONS?

Petitioner filed an action to acquire records of audits of the Library of Congress by the General Accounting Office or in the alternative, to compel the General Accounting Office to perform its duty by auditing the Library of Congress. The records in question would enable petitioner to establish a *prima facie* case in support of the allegations of his complaints against the Library of Congress. An affidavit was submitted in support of respondents motion to dismiss in the lower court by the federal official responsible for financial affairs in the federal agency which indicated that the General Accounting Office had never performed an audit of the agency as required under LCR LCR 1515-4 (as amended January 26, 1972).

Petitioner contends that the failure of the General Accounting Office to audit the Library of Congress and other federal agencies, where authorized by statutory law and agency regulations, permits abuse of government funds and allows federal officials to engage in empire building by arbitrarily, capriciously and illegally structuring of jobs, positions and classifications within their agencies in violation of law.

It is, therefore, asserted that relief by way of mandamus, under 28 U.S.C. § 1361 in the United States District Court for the District of Columbia was correct. The Court is asked to grant certiorari and to review the current practice by the Library of Congress and other federal agencies of avoiding or refusing the General

Accounting Office access to their records for purposes of audit, accountability and knowledge of expenditures affecting both federal employees and the general public.

III.

WHETHER PETITIONER WAS ENTITLED TO AN ORDER AS A MATTER OF LAW TO COMPEL THE CIVIL SERVICE COMMISSION TO PERFORM A POSITION CLASSIFICATION AUDIT OR IN THE ALTERNATIVE TO PROVIDE HEARING WHERE IT IS ALLEGED THAT THE PROPERLY ASSIGNED DUTIES AND CLASSIFICATION WERE ARBITRARILY, CAPRICIOUSLY AND ILLEGALLY ALTERED BY THE GOVERNMENT AGENCY WITHOUT NOTICE, HEARING OR ANY FORM OF COMPLIANCE WHATSOEVER WITH THEIR OWN PUBLISHED REGULATIONS?

Petitioner stated a claim upon which relief could be granted under The Classification Act, Back Pay Act, Lloyd-LaFollette Act, LCR 2016-8 (as amended June 29, 1973) and 28 U.S.C. §1361 because he was seeking an order to compel the Civil Service Commission to audit the federal agency for purposes of maintaining the status quo for his position and pay, to which he had been appointed under an implied contract. In addition, petitioner completed nine years of agency training in accordance with the "published" requirements for said position.[1]

The Classification Act gives rise to a claim for money damages for pay loss by reason of alleged wrongful acts involving classification. Petitioner was employed by the agency under an implied contract which guaranteed a

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[1]The Library of Congress regulations state with specificity that classification actions may only be appealed in accordance with 2016-8. (See also LCR 2020-3, Section 8).

ladder promotion plan position, but petitioner was denied access to the top grade of the ladder promotion plan by acts of respondents involving abuse of administrative discretion and civil and/or criminal conspiracy. Therefore, petitioner is seeking return of money used by the government agency for unauthorized purposes and back pay which should have been paid to him by the government for substantially equal work.

Petitioner asserts that he properly followed the only two available sources for relief. Under both LCR 2016-8 and the Classification Act the Civil Service Commission has responsibility to engage in supervisory review of the Library of Congress classification system which may be brought into play at the request of the employee, not the federal agency.

The second source of relief was by way of mandamus, under 28 U.S.C. §1361, in the United States District Court for the District of Columbia. Petitioner asserts that he is entitled to recovery of wages and damages since he has undergone an unjustified and unwarranted personnel action that has resulted in the withdrawal or reduction of all or a part of the compensation to which he was entitled as a Library of Congress employee.

CONCLUSION

For the above reasons, a Writ of Certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the District of Columbia Circuit.

Respectfully submitted,

RAY ELBERT PARKER
7702 Schelhorn Road
Alexandria, Virginia 22306
Counsel for Petitioner Pro Se.

AFFIDAVIT AND CERTIFICATE OF COUNSEL

I, RAY ELBERT PARKER, Petitioner Pro se in the above named cause of action, do hereby certify that the foregoing Petition For a Writ of Certiorari to the United States Court of Appeals For The District of Columbia Circuit is presented in good faith and not for purposes of delay.

RAY ELBERT PARKER
Petitioner Pro Se

APPENDIX A

UNITED STATES COURT OF APPEALS
For The District of Columbia Circuit

NO. 75-1628 SEPTEMBER TERM 1975

Civil Action 75-0301

Ray Elbert Parker,
Appellant

v.

Daniel J. Boorstin, [FILED March 1, 1976]
Librarian of Congress, et al.,
and Consolidated Case Nos. 75-1708
75-1953
75-1954
75-2160

BEFORE: MacKinnon and Robb, Circuit Judges

ORDER

ORDERED by the Court that appellant's petition for rehearing is denied.

The Clerk is directed to transmit a certified copy of this order to the District Court as promptly as the business of his office permits.

Per Curiam

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RAY ELBERT PARKER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.
	)	75-1085
JOHN G. LORENZ and	)	
ELMER STAATS,	)	
	)	
Defendants.	)	[FILED
	)	OCT 21 1975]

ORDER

Plaintiff in his petition for a writ of mandamus seeks an order from this Court compelling the Comptroller General of the General Accounting Office to conduct an audit of the Library of Congress and the United States Copyright Office with specific reference to job classifications and positions allocated to the Copyright Office. While he asserts that his cause of action arises under the Freedom of Information Act (5 U.S.C. §552); the Back Pay Act (5 U.S.C. §5596); the Classification Act (5 U.S.C. §§5101 et. seq.) and the Equal Employment Opportunity Act of 1972 (42 U.S.C. §§2000e, et. seq.), the allegations of the complaint failed to support the relevancy of many of these statutes. Contemporaneous with the filing of the complaint the plaintiff also filed a motion that the instant case be consolidated with the

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 75-1628	September Term, 1975
Ray Elbert Parker, Appellant	Civil Action 75-0301 [FILED Feb. 5, 1976]
v.	
Daniel J. Boorstin, Acting Librarian of Congress, et al and Consolidated Case Nos.	75-1708 75-1953 75-1954 75-2160

BEFORE: MacKinnon and Robb, Circuit Judges

ORDER

On consideration of appellees' motion for summary affirmance, of the opposition thereto, and of appellant's motion for stay of decision, it is

ORDERED by the Court that appellant's motion for stay of decision is denied, and, it is

FURTHER ORDERED by the Court that appellees' motion for summary affirmance of the orders on appeal herein is granted.

The Clerk is directed to transmit a certified copy of this order to the District Court as promptly as the business of his office permits.

Per Curiam

"pending cases of Parker v. Hampton, CA No. 75-0643 and CA No. 75-1078 since the cases involve essentially the same parties . . . same . . . facts, issues and regulations of the Library of Congress and matters affection [sic] classification and promotion of employees." It should be noted that the referred to pending cases are now before the Court of Appeals of this Circuit having been previously dismissed by Judge Howard F. Corcoran.

The defendants have filed a motion to dismiss the complaint for lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted. Rule 12(b)(1) and (6), F. R. Civ. P. The plaintiff has responded to this pleading by filing a motion to strike, alleging failure of the defendants to file a timely responsive pleading and has also filed an opposition to the motion to dismiss.

The Court has considered and reviewed the points and authorities submitted by the parties and on this *21st* day of October, 1975 it is

ORDERED that the plaintiff's motion for consolidation is denied, and it is further

ORDERED that plaintiff's motion to strike is denied, and it is further

ORDERED that the defendants' motion to dismiss is granted and this cause be and the same hereby is dismissed. *Carter v. Seamans,* 411 F.2d 767 (5th Cir. 1969), *cert. denied,* 397 U.S. 941 (1970), *United States ex rel. L. Margulies & Sons, Inc. v. McCarl,* 10 F.2d 1012 (D.C. Cir.), *cert. denied,* 273 U.S. 696 (1926).

/s/Barrington D. Parker
BARRINGTON D. PARKER
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RAY ELBERT PARKER, Plaintiff,	)	
v.	)	Civil Action
BARBARA A. RINGER, et al., Defendants.	)	No. 75-1078
RAY ELBERT PARKER, Plaintiff,	)	
v.	)	Civil Action
ROBERT E. HAMPTON, et al., Defendants.	)	No. 75-643
	)	[FILED July 29, 1975]

ORDER

The above-entitled actions were consolidated by the Court on July 9, 1975. On July 24, 1975 these cases came before the Court in Civil Action No. 75-643 for hearing on the following motions: (1) plaintiff's motion for a preliminary injunction; (2) plaintiff's motion for leave to file supplement to motion for preliminary injunction; (3) plaintiff's motion to amend the complaint; (4) plaintiff's motion for an evidentiary hearing on the admissibility of the results of a polygraph examination; and (5) defendants' motion to dismiss the action or in the alternative for summary judgment. In addition, in Civil Action No. 75-1078 the Court heard the following motions: (1) plaintiff's motion for a preliminary injunction and (2) defendants' motion to dismiss. It appearing to the Court upon consideration of these motions and following oral argument, that these actions have been prematurely filed without plaintiff having properly ex-

hausted his administrative remedies and thus the Court lacks subject matter jurisdiction over these cases. For this reason and the reasons stated in open Court in ruling on the above-described motions, it is by the Court this 29th day of July, 1975,

ORDERED that plaintiff's above-described motions filed in Civil Action No. 75-643 be, and the same hereby are, denied; and it is

FURTHER ORDERED that defendants' motion to dismiss filed in Civil Action No. 75-643 be, and the same hereby is, granted; and this action, Civil Action No. 75-643, be and the same hereby is, dismissed; and it is

FURTHER ORDERED that plaintiff's motion for preliminary injunction filed in Civil Action No. 75-1078 be, and the same hereby is, denied; and it is

FURTHER ORDERED that defendants' motion to dismiss filed in Civil Action No. 75-1078, be and the same hereby is, granted; this action, Civil Action No. 75-1078 be, and the same hereby is, dismissed.

/s/Howard F. Corcoran
HOWARD F. CORCORAN
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RAY ELBERT PARKER,	:	
Plaintiff,	:	
v.	:	Civil Action
JOHN G. LORENZ, Librarian of Congress, et al.,	:	No. 75-0301
Defendants.	:	[FILED
	:	May 8, 1975]

ORDER

Upon consideration of plaintiff's motion for a new hearing, and it appearing to the Court that plaintiff has failed to exhaust his administrative remedies and that leave to amend would not cure that defect in his suit, and for the reasons stated by the Court at oral hearing on plaintiff's motion for a temporary restraining order, it is, by the Court, this 8th day of May, 1975,

ORDERED, that plaintiff's motion be, and the same is hereby, denied.

/s/Charles R. Richey
CHARLES R. RICHEY
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RAY ELBERT PARKER, Plaintiff,	)	
v.	)	Civil Action Nos.
L. QUINCY MUMFORD, et al,	)	370-74 and 889-74
Defendants.	)	[FILED July 10, 1974]

ORDER

This matter came before the court on plaintiff's motion for a new hearing on the court's Order of June 17, 1974, which dismissed Civil Action No. 370-74. Contrary to plaintiff's statement, Civil Action No. 889-74 was not consolidated with Civil Action No. 370-74. The court has reviewed plaintiff's motion and concludes that plaintiff's motion should be denied. Therefore, it is by the court this 10th day of July, 1974,

ORDERED that plaintiff's motion for a new hearing in Civil Action No. 370-74 be, and the same hereby is, denied.

/s/Thomas A. Flanny
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RAY ELBERT PARKER, Plaintiff,	)	
v.	)	Civil Action
L. QUINCY MUMFORD, et al.,	)	No. 370-74
Defendants.	)	[FILED Apr. 30, 1974]

ORDER

This matter came before the court on plaintiff's motion for determination of administrative jurisdiction. The court having considered the motion and memorandum submitted in support thereof; and

It appearing that no authority has been cited in support of the court's power to grant the relief requested, it is this 30th day of April, 1974,

ORDERED that plaintiff's motion be, and the same hereby is, denied.

/s/Thomas A. Flanney
United States District Judge